

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD**

INTERNATIONAL UNION OF)	
OPERATING ENGINEERS, LOCAL 150,)	
AFL-CIO,)	Case Nos.: 13-CP-227526
)	13-CC-227527
And)	13-CC-231597
)	13-CC-233109
DONEGAL SERVICES, LLC)	
and ROSS BUILDERS, INC.)	

**RESPONDENT’S MOTION FOR LEAVE TO SUBMIT
SUPPLEMENTAL AUTHORITY IN SUPPORT OF EXCEPTIONS
TO THE ADMINISTRATIVE LAW JUDGE DECISION**

Respondent, International Union of Operating Engineers, Local 150, AFL-CIO (“Local 150”), submits this motion for leave to submit supplemental authority in support of its exceptions now pending before the NLRB. In support thereof, Respondent states as follows:

1. This matter was heard before NLRB Administrative Law Judge Kimberley Sorg-Graves in January and February 2019, and ALJ Sorg-Graves issued her decision on December 13, 2019.
2. During the unfair labor practice trial, counsel for Charging Parties was present and represented by counsel, and participated fully in the proceedings, examining and cross-examining Counsel for the General Counsel’s and Local 150’s witnesses, and also presented its own witnesses.
3. On February 7, 2020, Local 150, Counsel for the General Counsel, and Charging Parties timely filed various exceptions to the ALJ’s decision, and those exceptions are now pending before the NLRB.
4. On December 21, 2019, the National Labor Relations Board, Region 13 (“Region13”), also filed an action seeking an injunction against Local 150 pursuant to Section 10(l) of the Act in the United States District Court for the Northern District of Illinois, based on

the allegations in the complaint in the instant ULP charges, entitled *Ohr v. International Union of Operating Engineers, Local 150, AFL-CIO*, Case No. 18-cv-0814 (USDC ND IL).

5. During the pendency of the 10(l) proceeding, Region 13 moved to try the injunction case on the transcript of the underlying ULP case. Ultimately, although limited additional discovery was taken in the injunction case, the entire transcript of proceedings was submitted to the Court, and Local 150 did not object to Region 13's motion to try the injunction on the ULP transcript, or the Court's reliance on the transcript in rendering its decision in the 10(l) injunction.

6. In September, 2019, in the 10(l) matter, Region 13 and Local 150 filed cross-motions for summary judgment, along with the required Local Rule 56.1 Statement of Facts. Both Region 13 and Local 150 relied extensively in their respective 56.1 statements and memoranda in support of summary judgment, on the transcript of the ULP proceedings before ALJ Sorg-Graves.

7. On April 2, 2020, after the exceptions briefing was completed, the District Court issued its decision on the cross-motions for summary judgment, denying Region 13's request for preliminary injunction, and granting Local 150's motion for summary judgment. *See, Ohr v. Local 150*, 2020 WL 1639987 (N.D. Ill. , Feinerman, J., April 2, 2020), attached hereto as Exhibit A.

8. In the 10(l) decision, the Court addressed the merits of matters which are now pending before the NLRB on exceptions to the ALJ's decision, including the legality of a union's protest activity, and the joint employer relationship between Donegal Services, SJZJ, LLC, and WillCo Green, LLC, based upon the parties' motions for summary judgment and Rule 56.1 statements of fact, which incorporate the entire transcript of the underlying ULP hearing.

9. In denying the injunction, the Court addressed the merits of Region 13's arguments related to the legality of rats and banners, and concluded that the rat and banner activity is legal under the NLRA and the First Amendment of the United States Constitution, and existing Board and federal case law.

10. The Court also addressed whether Charging Party Donegal Services, and SJZJ, LLC and WillCo Green, LLC constitute a joint employer and thereby exonerate Local 150 from any alleged secondary activity in violation of Section 8(b)(4) of the Act as it pertains to WillCo Green, LLC. The Court concluded that Donegal Services, SJZJ, and WillCo Green do constitute a joint employer, and Local 150's activity was legal at the WillCo Green site.

11. The vast majority of the record on which the District Court relied in rendering its 10(l) decision was the underlying ULP transcript, in which Charging Parties fully participated through counsel as described in paragraph 2 above.

12. The NLRB did not seek a request for reconsideration, nor did it appeal the Court's denial of the injunction, and the April 2, 2020 is a final, unappealable order.

13. The matters addressed in the 10(l) decision are identical to matters now pending before the NLRB on exceptions to the ALJ's decision.

WHEREFORE, for all of the foregoing reasons, Respondent, International Union of Operating Engineers, Local 150, AFL-CIO, respectfully requests leave to submit the District Court's decision in *Ohr v. Local 150*, 2020 WL 1639987 (N.D. Ill. , Feinerman, J., April 2, 2020), as supplemental authority to its exceptions now pending before the NLRB.

Dated: July 27, 2020

Respectfully submitted,

By: s/ Melinda S. Burleson

One of the Attorneys for Local 150

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CERTIFICATE OF SERVICE

The undersigned, an attorney of record, certifies that she caused the foregoing Respondent's Motion for Leave to Submit Supplemental Authority in Support of Exceptions to Administrative Law Judge Decision, to be filed electronically with the NLRB Office of the Executive Secretary this 27th day of July, 2020. A copy of the motion was served upon Counsel for the General Counsel, and counsel for Charging Parties via e-mail as follows:

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